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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No. 6412 of 2007
Date of decision: 19. 12. 2007

Ekta **...Petitioner**

Versus

Vishal Singla **...Respondent**

CORAM: HON'BLE MR.JUSTICE RAJESH BINDAL

Present: Mr. Jitender Dhanda, Advocate for the petitioner.

Mr. Mahipal, Advocate for
Mr. Amar Vivek, Advocate for the respondent.

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RAJESH BINDAL, J.

The challenge in the present petition is to the order dated October 25, 2007 passed by the learned District Judge, Panchkula whereby application filed under Section 13-B of the Hindu Marriage Act, 1955 (for short "the Act") for a decree of divorce by way of mutual consent was dismissed as not maintainable.

The parties were married as per Hindu rites on April 22, 2006 at Mandi Ahemdgarh, District Sangrur, (Punjab). Thereafter they resided for a short period at Mandi Gobindgarh. No child was born out of the wedlock. Because of temperamental differences between the parties, they had been residing separately since June 29, 2006. To explore the possibility of settlement, they resided under one roof from April 26, 2007 to July 10, 2007. However, during this period, it is admitted by both the parties that they never cohabited. The issues between the parties have already been settled. Even a sum of Rs. 5 lacs on account of permanent alimony has also been paid to the wife by the husband and they have mutually agreed not to indulge each other in any civil or criminal litigation. However, learned Court below keeping in view the provisions of Section 13-B of the Act and

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also the fact that parties had resided together from April 26, 2007 to July 10, 2007 and on the date of filing of the petition i.e. October 04, 2007 they had not been living separately for the last more than one year, dismissed the petition.

Learned counsel for the petitioner submitted that it is a case of broken marriage where merely after two months of the marriage, the parties are living separately. The efforts from all quarters to make the parties compromise and settle down in their matrimonial home have failed. Even during the period from April 26, 2007 to July 10, 2007 when they had resided together, infact it was just living under one roof and nothing more. Neither they behaved like husband and wife nor performed their duties and liabilities as such. Once they are living separately for all intents and purposes from June 29, 2006, the petition for divorce under Section 13-B of the Act filed on October 4, 2007 was clearly maintainable and the learned Court below was in error in not granted the divorce by way of mutual consent as the same will just prolong the agony of the parties, who have once for all decided for living separately. All the issues between the parties have been settled. Even permanent alimony has already been paid by the husband to the wife. He has further referred the judgment of Hon'ble the Supreme Court in **Smt. Sureshta Devi Vs. Om Prakash AIR 1992 Supreme Court 1904** wherein Hon'ble the Supreme Court opined as under:-

> "The 'living separately' for a period of one year should be immediately preceding the presentation of the petition. It is necessary that immediately preceding the presentation of petition, the parties must have been living separately. The expression 'living separately' connotes to our mind not living like husband and wife. It has no reference to the place of living. The parties may live under the same roof by force of circumstances, and yet they may not be living as husband and wife. The parties may be living in different houses and yet they could live as husband and wife. What seems to be necessary is that they have no

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> desire to perform marital obligations and with that mental attitude they have been living separately for a period of one year immediately preceding the presentation of the petition. The second requirement that they 'have not been able to live together' seems to indicate the concept of broken down marriage and it would not be possible to reconcile themselves. The third requirement is that they have mutually agreed that the marriage should be dissolved."

Still further submission is that even if it is assumed for the sake of argument that statutory period has not expired before filing the petition,even then this Court can very well condone the statutory period keeping in view the circumstances of the case. Reference has been made to order passed by this Court in **Amit Jain Vs. Taruna Jain 2007 (3) Recent Civil Reports 785** wherein keeping in view the circumstances therein, this Court condoned the statutory period and directed the learned Courts below to pass the appropriate orders.

In the present case also what is evident from record is that the parties did not settle in the marriage because of certain temperamental differences and this fact is established from the fact that they started living separately merely after two months of their marriage. Merely because for a certain period from April 26, 2007 to July 10, 2007 they have lived together will not mean that the statutory period of one year has not elapsed before filing of the petition, once both the parties categorically admitted that they never lived like husband and wife during that period. Hon'ble the Supreme Court in **Smt. Sureshta Devi's** case (supra) has clearly opined that merely living under one roof does not mean that parties were living as husband and wife and in the present case for a period of three months they lived under one roof but not as husband and wife. As in the present case on appreciation of the material placed on record by both the parties, it can very well be opined that marriage between the parties has irretrievably broken down because of incompatibility of temperament. The matrimonial bond between the parties is beyond repair. Infact the marriage between the

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parties is only of name. The same has been wrecked beyond the hope of salvage. The parties have already settled their dispute by even paying the permanent alimony.

Accordingly, in my view, impugned order passed by learned Court below deserves to be set aside whereby petition filed by them under Section 13-B of the Act was dismissed and the matter is remitted back to the learned Court below to deal the same further in accordance with law.

The revision petition is disposed of in the manner indicate above.

December 19, 2007 **(Rajesh Bindal)**
Pka **Judge**